

Derrick D. ROBERTSON, *et al.*  
Serial No. 10/541,061  
December 14, 2009

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested.

The rejection of claims 1-21 under 35 U.S.C. §112, 1<sup>st</sup> paragraph, and the related drawing objection under 37 C.F.R. §1.83(a), are respectfully traversed.

Surely those having ordinary skill in the art are sufficiently capable of understanding that if one is going to provide host characteristics data, then one first needs to measure that data. However, to simply moot this outstanding ground of objection/rejection and expedite prosecution, the apparently objectionable phrase “measure and then” has simply been deleted from the claims. Accordingly, such rejection/objection has now been overcome.

The continued rejection of claims 1, 2, 5, 10, 13 and 16-21 under 35 U.S.C. §103 as allegedly being made “obvious” based on Jaskiewicz ‘491 in view of Rhea is respectfully traversed – as is the rejection of claims 6-9 based on Jaskiewicz/Rhea in further view of “official notice” and of claims 11-12 based on Jaskiewicz/Rhea in further view of Chatterjee ‘815 and of claim 14 based on Jaskiewicz/Rhea in further view of Stadel ‘590. All of these grounds of rejection are believed to be fundamentally erroneous based at least on deficiencies in Jaskiewicz and/or Rhea that apparently have not yet been fully recognized by the Examiner. Earlier arguments of record are hereby

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incorporated by reference so as not to unduly burden the record. The Examiner is respectfully requested to reconsider such arguments.

In any event, the Examiner's obviousness arguments more surely fail to show the now amended claims as obvious.

The Examiner argues that Rhea teaches including the destination address (NodeID) with a data item to be stored and that each node lying between the sender and the destination where the data item is to be stored must have some sort of check to see whether it is the destination and, if it is not, to forward the data item on.

The amended claims avoid this objection by specifying that the host characteristic data is host storage characteristic data indicating one or more characteristics of one or more memories of said host computer.

Moreover, neither Jaskiewicz nor Rhea teaches a single computer which:

- a. receives storage conditions for a data item from another computer;
- b. provides host storage characteristics data indicating one or more characteristics of one or more memories of said host computer;
- c. tests to see whether those characteristics meet those conditions; and
- d. stores the data item if those conditions are met, or forwards those conditions on if the conditions are not met.

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In particular, neither Jaskiewicz nor Rhea, nor indeed any combination of the two references, teaches applicants' claimed feature a), which distributes the processing required to find a suitable store for a data item and thus overcomes the disadvantage of carrying out that processing centrally as seen in Jaskiewicz.

Given such fundamental deficiencies of Jaskiewicz and/or Rhea with respect to each independent claim 1, 15, 16, 20 and 21, it is not necessary at this time to further detail additional deficiencies of the various allegedly "obvious" combinations of references with respect to other aspects of the rejected claims. Suffice it to note that, as a matter of law, it is impossible to support even a *prima facie* case of "obviousness" unless the cited prior art teaches or suggests each and every feature of the rejected claims.

The Examiner's "response to arguments" section is appreciated. However, it is respectfully noted that the cited case law involving attacking references individually is based on factual predicates that are not here present. Just as the Examiner must discuss plural references in *seriatim* (because the human brain for the most part is a serial processor), so must the applicants discuss the references individually as well as in combination. The cited case law involved instances where peculiar facts indicated that the applicants had not addressed the combination of references at all. Those cases are simply inapplicable to the present fact situation.

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The Examiner's comments seem to recognize that Jaskiewicz and/or Rhea taken alone do not scale well and, therefore, could overload a computer with software as the size of the network expands. Somehow the Examiner expects the "combination" of Jaskiewicz and Rhea to solve this problem – and then with circular logic assumes that the Examiner's *post hoc* recognition of a solution would have suggested a motivation for such combination. That is not believed to be the case. In any event, applicants' amended claims even more clearly describe advantages over any possible or even hypothetical "combination" of these two references.

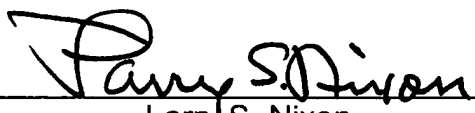
The Examiner's attention is also drawn to new dependent claims 22-26. Because amended independent claims no longer require the storage data to be sent with the data items, that additional limitation is now added by dependent claims 22-26.

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Accordingly, this entire application is now believed to be in allowable condition,  
and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
Larry S. Nixon  
Reg. No. 25,640

LSN:lef

901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100